

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

In the United States District Court for the	
Name (under which you were convicted): <u>Ibraheem Islam</u>	Docket or Case No.: <u>2:21-cr-00444</u>
Place of Confinement: <u>FCI Cumberland</u>	Prisoner No.:
UNITED STATES OF AMERICA	v. <u>Ibraheem Islam</u> MOVANT (include name under which convicted)

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging: Martin Luther King Building U.S. Courthouse, 50 Walnut St., Newark, New Jersey 07101
(b) Criminal docket or case number (if you know): 2:21-cr-00444
2. (a) Date of the judgment of conviction (if you know): Monday, October 25, 2002
(b) Date of sentencing: Monday, October 25, 2002
3. Length of sentence: 100 - Months
4. Nature of crime (all counts): 18 USC 922 (g), 21 USC 841 (a)(1) and (b)(1)(C), 18 USC 924 (c) (1) (A)(i)
5. (a) What was your plea? (Check one) (1) Not guilty (2) Guilty (3) Nolo contendere (no contest)
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? #18
6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No
8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Name of court: NA

(b) Docket or case number (if you know): NA

(c) Result: NA

(d) Date of result (if you know): NA

(e) Citation to the case (if you know): NA

(f) Grounds raised: NA

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): NA

(2) Result: NA

(3) Date of result (if you know): NA

(4) Citation to the case (if you know): NA

(5) Grounds raised: NA

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: NA

(2) Docket or case number (if you know): NA

(3) Date of filing (if you know): NA

(4) Nature of the proceeding: NA

(5) Grounds raised: 21A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: 214

(8) Date of result (if you know): 11/18

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): 7/18

(4) Nature of the proceeding: N/A

(5) Grounds raised: NIA

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: 1114

(8) Date of result (if you know): 11/14

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

my lawyer did not file anything on my behalf.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective Counsel - 922(g) improperly charged

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel did not properly and/or appropriately access or (Movant's) gun charge 922(g), as he (Islam) was not in possession of any firearms during said crime. The (Movant) is challenging the charge, denying that he (Islam) had violated 922(g), because a gun was not located on his person during admission of the reported crime. The gun was reportedly located in a car - not actually found on the person of him (Movant). He argues that evidence (not used by (counsel)) offers credible evidence showing the gun was not in his (Movant's) power or control.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(5) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: My Counsel did not advise me about my direct appeal nor did they advise the Court of these findings.

GROUND TWO: Ineffective Counsel - 424 (c) (1)(A)(i)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Two issues arise when reviewing Movant's 424 (c)(1)(A)(i) charge. 1. No drugs were reportedly found on his person. Nor was he actually found (whether directly or indirectly) trafficking drugs. 2. Movant (Islam) did not possess any firearms during the said crime. Counsel ignored to present evidence or assist their Client in an effective manner by ignoring these facts presented in the present case before the Court. Rather, he was tried for his purported past criminal conduct and convicted of it.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: my Cancer did not advise the Court of these findings.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(5) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: I was not aware at the time, and later became aware of the findings. Cancer was suppose to raise these issues, but failed to do so.

GROUND THREE: Insufficient cause - 841(a)(i) & (b)(i)(c)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Manant (Islam) was reportedly found with a controlled substance. But in further review of such claims, it can be determined that no substances were actually ever found on his person or proximity, nor did any sources confirm any intent (if did find any substance), his (Islam's) intent to distribute such reported substance. Again, Manant claims cause did not thoroughly review the evidence that weighed in his (Islam's) favor demonstrating a lack of evidence, showing Manant's lack of involvement in the crime. He (Manant) argues this charge carries not substantial proof nor shows he actually committed such crime. Drugs were not located near or on Manant.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Cause did not advise me of the information contained in reporting nor sought to assist in the direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(5) is "Yes," state:

Name and location of the court where the appeal was filed: NIADocket or case number (if you know): NIADate of the court's decision: NIAResult (attach a copy of the court's opinion or order, if available): NIA

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: I was not made aware until a later time about the issue.

GROUND FOUR: Ineffective Counsel - Unlawful search and seizure

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Marcant claims Counsel did not admit to court the unlawful search and seizure conducted by law enforcement during the "criminal investigation". Marcant contends counsel did not argue the lack of evidence of drugs reportedly in his possession. Law enforcement unlawfully searched his home without cause or reasonable suspicion as required by law. NO drugs or weapons were in plain view, and at the arresting scene evidence shows Marcant (Islam) in fact had no weapons or drugs on his person or proximity.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: NIA

Counsel did not advise the court of these findings.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(5) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: I have yet to

argue to the court the grounds presented in the motion.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. NIA

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing: NIA

(b) At the arraignment and plea: NIA

(c) At the trial: NIA

(d) At sentencing: Saverio A. Viggiano, Asst. federal public defender,
1802 Broad St., Newark, NJ. 07102

(e) On appeal: NIA

(f) In any post-conviction proceeding: NIA

(g) On appeal from any ruling against you in a post-conviction proceeding: NIA

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?
Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future?

Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

The arguments laid out in this motion are relevant by law and qualify as legitimate challenges to the crimes properly made against movant (Islam). And fall within the one-year statute of limitations as contained in 28 USC 2255.

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, Movant asks that the Court grant the following relief: Movant ask the court

to accept his arguments made in the motion and to
vacate, set aside, or correct his sentence.

or any other relief to which movant may be entitled.

N/A

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on October 21, 2022
(month, date, year)

Executed (signed) on October 21, 2022 (date).

X Islam

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

N/A